

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2023 MAR 23 AM 11:00

CLERK

BY AL
DEPUTY CLERK

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
PHILLIP WILSON,)
Defendant.)

Case No. 1:16-CR-97-1

MOTION TO RECONSIDER SETTING OF CONDITIONS OF RELEASE

NOW COMES Defendant, Phillip Wilson, by and through his undersigned attorney, Mark D. Oettinger, of Montroll, Oettinger & Barquist, P.C., and hereby respectfully moves that the Court reconsider setting conditions of release in the above-captioned case. In support of his request, Mr. Wilson submits the following arguments.

On June 15, 2017, Mr. Wilson was sentenced to a period of 84 months of incarceration after pleading guilty to drug conspiracy and firearm charges. He was released in early August 2022. He tested positive for cocaine and cannabis on January 19, 2023, and he admits that he used cocaine and cannabis on or about January 17, 2023. Following the positive test, he admitted his cocaine use to his Supervising Officer, and he then applied for, and completed, a 10-day period of residential treatment at Valley Vista.

At the February 22, 2023, hearing on this matter, Mr. Wilson again admitted the use of the controlled substances that caused him to seek admission to Valley Vista. Everyone seemed to agree that this had been the right thing for him to do, and the parties seemed to be on track for recommending his re-release into the community, until he purportedly tested positive immediately prior to the hearing. Now that we have the detailed lab report from the February 22, 2023 test, however, the defense submits that its findings clearly support what Mr. Wilson told the Court...that he did not use controlled substances subsequent to his discharge from Valley Vista.

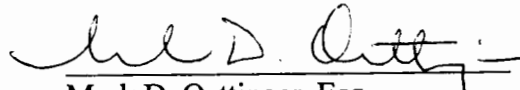
The March 10, 2023 letter from the lab (which has been previously submitted as Exhibit A for today's hearing), found the normalized February 22, 2023, concentration of cocaine metabolite in Mr. Wilson's system to be 1/1713 (roughly one-half of a *thousandth*) of the

concentration that was found in his system on January 27, 2023. Note also that the concentrations have continued to decrease dramatically and consistently over the course of the last four tests. The *rate* of change slows, which is consistent with the “half-life” characteristic of the elimination process. In addition, there was no marijuana found in Mr. Wilson’s system on February 22, 2023. By way of further corroboration, Mr. Wilson’s creatinine level was back within normal range on February 22, 2023, affording additional circumstantial evidence that he had not been using recently. Finally, peer-reviewed scientific literature supports the notion that individuals with high body mass retain residual metabolite for longer, and Mr. Wilson stands 6’ 7” and weighs 360 lbs.

In sum, the February 22, 2023, test cannot be fairly read as demonstrating post-Valley Vista use. Conditions of release should therefore be set. In the event that the Court disagrees and determines to continue the detention of Mr. Wilson, he respectfully requests that the matter be scheduled for sentencing at the Court’s earliest convenience.

DATED at Burlington, Vermont on this 23rd day of March, 2023.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark D. Oettinger", is written over a horizontal line.

Mark D. Oettinger, Esq.
Attorney for Phillip Wilson
P.O. Box 1045
135 College Street
Burlington, VT 05402
(802) 540-0246
moettinger@mblawoffice.com